

NASHUA CITY PLANNING BOARD
July 9, 2009

The regularly scheduled meeting of the Nashua City Planning Board was held on Thursday, July 9, 2009 at 7:00 PM in the auditorium at City Hall.

Members Present: Ken Dufour, Chair
Jody Wilbert, Esq., Mayor's Representative
Daniel Latham, Secretary
Alderman Richard LaRose
Steve Dookran, City Engineer
Cynthia Overby, Alternate
Raymond Jurewicz, Alternate

Chair Dufour said in the absence of two regular members, the Alternate Members Mrs. Overby and Mr. Jurewicz will be taking part and voting.

Also Present: Roger L. Houston, Planning Director
Matt Taylor, Deputy Planning Manager

Approval of Minutes

June 18, 2009

MOTION by Mrs. Wilbert to approve the minutes, of June 18, 2009, waive the reading and place on file.

SECONDED by Mrs. Overby

MOTION CARRIED 5 to 0 (Mr. Dufour and Alderman LaRose abstained)

COMMUNICATIONS

Mr. Houston went over the following items that were received after the mailing went out:

- Communication on New Business #3 - Pennichuck Water booster station.
- Revised technical review meeting schedule for determining regional impact.
- Memo from Roger Houston dated July 7th concerning Other Business #3 referral from Board of Alderman Resolution R-9-206 relative to the disposition of land on Shady Lane.

REPORT OF CHAIR, COMMITTEE & LIASON

None

PROCEDURES OF THE MEETING

Mr. Dufour went into the procedure of the meeting as follows:

After the legal notice of each conditional, special use permit, site plan or subdivision plan is read by the Chair, the Board will determine if that the application is complete and ready for the Board to take jurisdiction. The public hearing will begin at which time the applicant or representative will be given time to present an overview and description of their project. The applicant shall speak to whether or not they agree with recommended staff stipulations. The Board will then have an opportunity to ask questions of the applicant or staff.

The Chair will then ask for testimony from the audience. First anyone wishing to speak in opposition or with concern to the plan may speak. Please come forward to the microphone, state their name and address for the record. This would be the time to ask questions they may have regarding the plan.

Next public testimony will come from anyone wishing to speak in favor of the plan. The applicant will then be allowed a rebuttal period at which time they shall speak to any issues or concerns raised by prior public testimony.

One public member will then be granted an opportunity to speak to those issues brought by the applicant during their rebuttal period. The Board will then ask any relevant follow-up questions of the applicant if need be.

After this is completed the public hearing will end and the Board will resume the public meeting at which time the Board will deliberate and vote on the application before us. The Board asks that both sides keep their remarks to the subject at hand and try not to repeat what has already been said.

Above all, the Board wants to be fair to everyone and make the best possible decision based on the testimony presented and all applicable approval criteria established in the Nashua Revised Ordinances for conditional, special use permits, site plans and subdivisions. Thank you for your interest and courteous attention. Please turn off your cell phones and pagers at this time.

OLD BUSINESS - CONDITIONAL / SPECIAL USE PERMITS

None

OLD BUSINESS - SUBDIVISION PLANS

None

OLD BUSINESS - SITE PLANS

None

NEW BUSINESS - SUBDIVISION PLANS

1. **B. Romaine Kelson Revocable Trust (Owner). Proposed subdivision to relocate a lot line and transfer 1,081 sf from Lot 14-100 to 14-46. Property is located at 5 King Street. Sheet 14, Lots 46 and 100. Zoned "RB" - Urban Residence B. Ward 7.**

MOTION by Alderman LaRose that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mrs. Wilbert

MOTION CARRIED UNANIMOUSLY

Ernie Jeffrey, Ernest Jeffrey Civil Engineer & Land Surveyor, Hillsborough, NH

Mr. Jeffrey is representing Mrs. Kelson. He said currently there are 2 existing lots. This is not a subdivision, but a lot line relocation. Mr. Jeffrey showed on the plan the lot line. It is in the RB zone. They are trying to make the lot more conforming to the current zoning regulations. They are requesting to move the lot line 16.4 feet towards King Street so they have close to 65 feet of frontage to make the lot more buildable. Currently there is only 50 feet which leaves very little room for a house. I don't believe Barbara Kelson plans on building a house here, but to make the lot more marketable she decided she wanted to increase the area so we have the full 6,000 square feet and also to increase the lot width from 50 to 65 feet. Everything is shown on the plan. We are requesting waivers. One of the waivers is I did not do the plan on CAD because I do not have that capability. I have always done hand drawn plans. I just don't do the volume of work to have a CAD system. Nashua has always accepted hand drawn plans before so I respectfully request that waiver. As for the waiver for TOPO, we are showing a leeching basin on the lot and the whole area has

sandy soils and the TOPO I believe could be addressed by the future buyer of the lot when he applies for building permit. I am sure TOPO will be requested so the proposed grades will be shown at that time. The sidewalk requirement, there is an existing sidewalk that is shown on King Street, one on each side of the road. Barker Avenue I don't believe complies with today's standards. It is pretty narrow. It only has a 40 foot width, widened slightly to 45 feet. None of the rest of the street has any sidewalk. A sidewalk would narrow it down too much. Mrs. Kelson was requested to contribute to the sidewalk fund and is a retired person and I believe that would be an undue hardship for her to contribute to that fund and the future owner of the lot could if necessary could contribute to the fund or build a sidewalk. In my opinion a safety assessment should be done on that street to put a sidewalk in because it wouldn't make a lot of sense. This is an adjustment of the lot line to make the lot more buildable and would do the city gratis to approve the lot line relocation because right now there is currently not a building on the lot. This will make the lot buildable so it will increase the city's tax base when built on.

Mr. Dookran said you are creating a buildable lot. You know this area is a combined sewer area. I want to ask the homeowner if they have had any problems with sewer back-ups.

Mr. Jeffrey said he can't attest to that.

Mr. Dufour said we will have the homeowner come up and answer some questions.

Mr. Dookran asked Mr. Jeffrey if he had any discussions with staff about the future building not having any basement plumbing fixtures as a stipulation.

Mr. Jeffrey said no. They haven't talked to any builders. A good majority of the houses in the neighborhood do have basements.

Mr. Dufour said his concern is where we do have a lot of sewer back-up, the city's engineer office prefers not to have any plumbing in the basement. No washer/dryer hook-up, no half baths so that might very well be a stipulation. If there are any concerns about that now would be the time for you or the applicant to address them.

Mrs. Wilbert said she wonders about the width of that road and whether it is non-conforming. Is there room for a sidewalk on Barker Avenue.

Mr. Dookran said it not your standard subdivision road way. I have seen narrow streets with sidewalks. If you wanted to put one in I think it would work.

Mrs. Wilbert asked how many houses on that street.

Mr. Jeffrey said approximately 4 to 5. It is not that long of a street.

Mrs. Wilbert asked if there has been any abutter input to you.

Mr. Jeffrey said no.

Mr. Dufour said we have a long established policy that if we don't require a sidewalk we get a sidewalk contribution in lieu of building it. The applicant can decide if they want to build the sidewalk or not. You stated when the builder, or who ever buys it, decides to build a home, they can address the sidewalk issue. The time the city addresses the sidewalk issue is right now. Mr. Dufour asked staff if that has not been our policy where we will accept a contribution in lieu of. We are cleaning this up so it becomes marketable.

Mrs. Wilbert said this plan with the buildable lot is not coming back before this board is it?

Mr. Houston said that is correct. It will not.

Mrs. Wilbert said she wanted to clarify that. We are creating a lot and yes they would have to go through the permitting process but that truly is a more mechanical process. In other words the engineering of this site is a more mechanical compliance with the setbacks, etc. Right now we are creating a situation where a house can be built on it and the city's crack at getting the sidewalk is now. I just wanted staff to confirm that for us.

Mr. Taylor said that is correct. In the Land Use Code for a residential subdivision, if the developer qualifies, and there is certain criteria in this instance this subdivision does qualify to make a contribution in lieu of construction of a sidewalk that has always been the policy and that is the expectation that is laid out in the Land Use Code. In this instance the applicant is asking for a waiver of both, construction as well as the contribution.

Mr. Dufour said the criteria we use to establish the contribution is the frontage. Would we include both lots in those calculations or just the new lot.

NCPB

July 9, 2009

Page 6

Mr. Houston said typically you require both of the lots because you are creating a new lot from the existing lot. If there are 2 lots as part of the subdivision, then you include both lots.

Mr. Jeffrey said he didn't believe we are creating a new lot. We are just adding a little bit on to the existing lot. Couldn't a house be built on the lot the way it is?

Mrs. Wilbert asked if it is a buildable lot now by virtue of being grandfathered.

Mr. Houston said no, they cannot pull a building permit. The merger ordinance from 1976, in the non-conforming section states, that if both lots were adjacent and under the same ownership, it's not considered developable even though it is a separate lot.

Mrs. Wilbert asked if is possible, do we have any mechanism by which we could when we create this new buildable lot, it will still be titled in the B. Romaine Kelson Revocable Trust, can we, is there a process by which we could collect the sidewalk contribution if that lot is sold.

Mr. Houston said the sidewalk contribution should be something that the applicant should be willing to offer to you if they meet the test to be able to offer a contribution. In this particular case they do not want to construct the sidewalk. The board, if you desire, could make it a condition of approval that they construct the sidewalk from King Street and along the frontage on Barker Street at the time a building permit, or prior to issuance of a certificate of occupancy. Depending on when that happens and further down the road there will be a note in the file and we will flag the lot. We have been trying to collect sidewalk contributions at the time of subdivision recordation. If they are constructing the sidewalk you could wait and make it a requirement of the building permit or certificate of occupancy.

Mrs. Wilbert asked if you are telling us that we can't accept a contribution at that time.

Mr. Houston said the planning board cannot mandate a contribution. If the applicant is willing to give you a contribution, it is a contribution. They are required by ordinance to construct a sidewalk. If they meet the definition to offer a contribution then they can offer a contribution in lieu of the sidewalk and the board makes a decision.

Mrs. Wilbert said she understands that. What I am saying is can we, if we were hypothetically to approve it with a contribution can that contribution be collected at the time of the building permit or certificate of occupancy.

Mr. Houston said it could be.

Mr. Dufour said what you are saying is it is a safer thing for the city if we accept that at the time we record the subdivision plan.

Mr. Houston said it usually is. We don't know when it would be, it could be next year or 20 years from now.

Barbara R. Kelson, 5 King Street

Mrs. Kelson said about the sidewalks on King Street. They are off and on. I have one in front of my house and they are only on one side of the street. As far as putting sidewalks on Barker, there are 2 driveways opposite my lot. They back out naturally. If the city engineer measured the street I would think that, there hasn't been any sidewalks or a need for sidewalks in years ever so I would think that is probably the reason, because it is too narrow. There are about 5 houses on Barker on either side.

Mr. Dufour asked if there are problems with sewer back-up in your neighborhood.

Mrs. Kelson said no. Formally, way back I did have a problem and I put a back flow things and I haven't had a problem since. As far as in my cellar and most cellars it is just a washer and dryer and sink, not a bathroom. If that was a concern that there be an apartment or something down there.

Mr. Dufour said that is not the concern. The city engineer has convinced us over the years that it is a problem in areas. Where you say you have a washer and dryer downstairs. Those neighborhoods that have trouble with sewer back-up that is a problem. So in those neighborhoods what we have stipulated on past plans is that when we approve something like this we stipulate that new building cannot have a basement washer/dryer, half bath.

Mrs. Kelson said she hasn't seen anybody in the neighborhood have any back-up.

Mr. Dufour said the location of the sidewalk I know that we have varying widths of the street, but the sidewalk wouldn't be built on the street portion, it would be built within that right-of-way, would it not?

NCPB

July 9, 2009

Page 8

Mr. Dookran said yes. We try to maximize the pavement on the street. In a case like this where you have approximately 40 feet of right-of-way we try and get a sidewalk right at the edge of the right-of-way so it leaves room to have enough pavement and maybe some future widening if needed.

Mrs. Kelson said some of her land comes right down to the street. I mow it and take care of it. It is outside my fence. I imagine that would encroach on the land which I wouldn't think would be fair.

Mr. Dookran said I think the land you are referring to is probably within the right-of-way. Some of that land.

Mrs. Wilbert said just to clarify, I know that is often confusing to people but what we suspect is that where you think it might be your land is actually the city's land that you have been mowing. It is what we call the right-of-way for the street is broader, significantly broader than the paved road is and so when we put in sidewalks it doesn't mean we cut up the paved road, we go into the sides. I also just want to clarify that we do have a policy as a board of trying to create sidewalks around the city and that is why we have the ability within the ordinance to accept a contribution in lieu of construction so if in fact this board were to decide that the sidewalk on Barker didn't make any sense our position is more likely that not that sidewalks are needed elsewhere in the city and that a contribution should be collected. Do you have a position on that?

Mrs. Kelson said I agree with the position that if I were to sell it and somebody were to build I would offer that contribution then because I would have the money because I would be selling it. Right now \$7,000, I am on a fixed income. It has been hard to just try and do this. My reason for doing it is that it would add more value to the property when my house is worth so much less now and I have 2 lots. I just wanted to make it a little more valuable so that in the future say if I sold the whole thing somebody with a family, I have a big cape, they would want to put a swimming pool out there so they wouldn't really want to sell it. But I could get a little bit more for it because it is more valuable and in the future down the line 20 years, 10 years whatever they could sell it if they want to.

Mr. Dufour said we as a city can require you to put the sidewalk in so ultimately you may determine, even though we approve it under the stipulations that you put the sidewalk in you may find that too costly and not in fact record this plan, in effect what we are doing here this evening would be just an exercise. That

would be ultimately your prerogative. That is the only recourse we have. We can either have you put the sidewalk in or the applicant can volunteer a contribution. But that we have to know before we deliberate so if you are telling us you're not for the contribution then we may see it in such a way that we will mandate you to put the sidewalk in as a condition of approval. We may decide from some of the words that I have heard, to approve it subject to a contribution being made at the time of that the lot gets developed at which case you pay it then or you pay as you are selling it, whatever the mechanics of that is but that is another possibility we have. Under that scenario if we were to make a motion that we accept a contribution in lieu of requiring you to build the sidewalk what are your thoughts on that.

Mrs. Kelson said she wasn't clear on if I built the sidewalk do I build it for the whole street or just in front of my lot, my buildable lot or do I have to do it right up to the corner. And the rest of street doesn't have any sidewalks.

Mr. Dufour said you would build it from the corner to the end of the new lot.

Mrs. Kelson asked how much would that cost.

Mr. Dufour said he had no idea.

Mrs. Kelson asked if she would have to pay for that, right. Depending on what the cost or whatever they charge me for that?

Mr. Dufour said we don't get involved with that. I have no idea how much they would charge you. I don't know how much they would charge you if you transfer that property 5 years from now. We have no way of knowing what that is going to be.

Mrs. Kelson said or if the city engineer would even say you should have one on the street opposite 2 driveways actually.

Mr. Dufour said the driveways are not the issue. As we have explained your thinking that if we put a sidewalk as they back out they are going to back into the sidewalk and that isn't going to happen.

Mrs. Kelson said she agreed that she would give the donation to the sidewalk fund at the time of it being developed.

SPEAKING IN OPPOSITION OR CONCERN

No one

SPEAKING IN FAVOR OF THE PLAN

No one

Mr. Dufour said this concludes the public hearing on this application. We will now carry the deliberations into our public meeting. The Board reserves the right to recall any party to this case for clarification.

Mr. Dufour said the topic of conversation seems to be the sidewalk. It is our established policy that we have two options, require the sidewalks or accept a contribution and that contribution is used to enhance sidewalks in that neighborhood and areas that are deemed more necessary. We do have the leeway of accepting the contribution at the time that a CO is issued on that second lot. That is an option or we can require the sidewalks.

Mrs. Wilbert said she is sympathetic to the fact that our applicant is on a fixed income but she herself has acknowledged that we are adding value to her property and staff has informed us that it is not buildable as is. I think that the appropriate balance of interest here would be to approve the plan with an acceptance of the contribution in lieu of sidewalk construction to be collected at the time of transfer or build on the lot, either one. That is what I think is the reasonable balance of interest here.

Mr. Dufour said he felt the same way. The mechanics of that is rather difficult because if we approve this and with those stipulations, and I have others about the laundry hook-up in the basement, but if we approve this with that stipulation, 5 years down the line when she decides to market this property, she places an ad, somebody comes around, buys it, deed is transferred, the builder comes in, pulls a permit, and low and behold at that point he discovers that he has to put in sidewalks the whole distance of the 2 lots before he can get a building permit. That is the problem. I don't know if there is anything we can record that requires that.

Mr. Houston said you could put a note on the plan that's recorded and you could make it at time of building permit so I believe she offered a contribution that could be paid at time of building permit. It could also be done at time of certificate of occupancy but we have had some situations recently and its not a common occurrence but the builder leaves town or something like that and then the homeowner has to pay the sidewalk fee because it hasn't been paid.

Mrs. Wilbert said two things occur to me. First of all we voted a favorable recommendation at the last meeting to a zillion dollar computerized system which one would think we would be as a city developing a better way to track these issues. That is number two, the answer occurs to me if the builder buys the lot and hasn't reviewed the conditions on the recorded plan then shame on him and he is stuck. So I stand by my position that's how we deal with the sidewalk. I would be prepared to make a motion after discussion that we approve with conditions 2 through 4 and the added condition that there be no basement plumbing.

Mr. Dufour asked if that covers it.

Mr. Dookran said that language implies what we intend. We have had different versions of it I think everybody knows what it means.

Mr. Houston said if we could add something. It might be wise actually as opposed just as a note on the plan that it should be a requirement as part of your condition that it be put in the deed. So usually they read one or both of the documents prior to purchasing. That way it will be caught especially if someone is reading the deed. It will be in the language of the deed, like an easement would show up in the deed.

Mr. Jurewicz asked if we had to make a determination whether it is a donation or a sidewalk. Because what I observed is trash day, I don't remember if it was Monday or Tuesday this week and a car was pulling on to Barker and because of barrels where they are situated the car had to back up that was on King Street to let Barker out so one could come in. So I do find it extremely narrow that street and even with the setback it seems a bit narrow.

Mr. Dufour said if the engineering department so deemed it.

Mr. Dookran said it is hard to answer any of these questions because we don't have a survey that represents what's out there. I don't have a good plan survey that shows me where the edge of pavement is, we have a right of way line, we don't have the opposite edge or drives or anything like that. It is very difficult to address such a question but say for instance that the edge of pavement is close to the right of way and we wanted a sidewalk on that side of the street then it would be the right thing to widen on the opposite side for traveling or parking or whatever you want.

Mr. Latham said the houses on the opposite side are very close to the street as it is if you have been down there recently.

Mr. Dookran said he was down there.

Mrs. Wilbert said again I am convinced we have I am counting a 6 lot street that has no sidewalks on it now and is we know narrow. The odds of the city investing in widening that little street are probably not great and I think the clear answer to your question Ray is probably if the engineer knew how wide our right-of-way was he would know whether or not if there were funding to widen that street if it were possible. Otherwise if we don't own the land there is a taking. Then we are taking from front yards and then there is even an additional cost.

Mr. Dufour said he thinks the conversation is mute anyway because it is more financially advantageous for the applicant to make the contribution. We are going to take that contribution where it is deemed more necessary.

MOTION by Mrs. Wilbert to approve New Business #1 - Subdivision Plans, Romaine Kelson Revocable Trust (Owner) proposed subdivision to relocate a lot line and transfer 1,081 sf from Lot 14-100 to 14-46. It conforms to NRO 190-138(G) with the following stipulations and waivers:

1. The request for a waiver of 190-212(A)(1), which requires that a sidewalk be located on at least one side of the street for new subdivision is granted.
2. Sidewalk contribution to be collected by the City when issuance of building permit for Sheet 14-46. This should be recorded on plan and in the deed for Sheet 14 - Lots 46 & 100.
3. The request for a waiver of 190-282(B)(9), which requires that the plan includes existing conditions within one thousand feet of the site is granted.
4. The request for a waiver of 190-282(C), which requires that the subdivision plan be submitted to the City in an electronic format is granted.
5. There be no plumbing in any basement constructed on the new lot, 14-46.

SECONDED by Alderman LaRose

Mr. Dookran said he doesn't mean to prolong the discussion but was just looking over the plan here another time. The issues regarding sidewalks come up all the time. Sometimes we end up in the right place sometimes I think we don't. If for instance they were real physical constraints out there on Barker Avenue, say for instance we didn't have enough right-of-way to have 2 lanes of traffic and sidewalks. Would our request be any different?

Mrs. Wilbert said no.

Mr. Dufour said no, mine wouldn't either.

Mrs. Wilbert said her argument would be that we are adding value to the land and that we have a policy that calls for the construction of sidewalks around the city as needed.

Mr. Dookran said ok because I have a feeling that even though the surveyor says there is 40 to 45 feet of right-of-way that may not be the case. Just looking at all the, I looked at the overall plan it looks very narrow.

Mrs. Wilbert said with regard to this plan sir, I still think that it being the short street that it is and there be sidewalks on the other street that the sidewalks are supurpous here and much needed some where else. That is why I look at these and I am happy that we have the ability to accept contributions otherwise we wouldn't have sidewalks anywhere.

Mr. Dookran said I know Attorney Wilbert that you are going solely on the provision of the ordinance. I know that is what you are using, but I think the intent probably was if you could put a sidewalk on your street, you do so. What I was getting at was if it were impossible to put a sidewalk, then you don't. That doesn't apply. That alternative doesn't apply.

Mrs. Wilbert said let me make sure I understand. You are saying that you believe the ordinance means if a sidewalk is possible we should not entertain the notion of a contribution.

Mr. Dookran said if it isn't possible.

Mrs. Wilbert asked if possible to build a sidewalk on a specific site that we should not, the intent of the ordinance is that we not accept a contribution?

Mr. Dookran said quite the opposite. I am saying if it is possible, but it doesn't make sense, because sidewalks are better needed elsewhere, take the contribution.

Mrs. Wilbert said that is her position on this particular site plan.

Mr. Dookran said what he is having conflict with is if it is not possible because the road is too narrow, the right-of-way is too narrow, then this person is not obligated.

Mrs. Wilbert said she sees your point now but I still think the person is obligated because we are adding value to the property that we are not required to and which is currently unbuildable and as a general policy I think we need to be consistent.

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SUBDIVISION PLANS

2. **Acorn Family Realty Trust & Three Congress Street, LLC (Owners). Proposed subdivision to relocate a lot line and transfer 1,833 sf from Lot 140-2 to Lot 140-19. Property is located at 3-7 Congress Street. Sheet 140, Lots 2 and 19. Zoned "PI" - Park Industrial. Ward 9**

MOTION by Mrs. Wilbert that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Alderman LaRose

MOTION CARRIED UNANIMOUSLY

Jim Petropulos, Hayner/Swanson, Inc.

Mr. Petropulos said tonight they are seeking simple lot line relocation between our property and the Mapleleaf Construction property which is our corporate neighbor to the southwest. Congress Street is located off of Northeast Boulevard. We are in a park industrial zone near exit 5, west of the turnpike. The area is commercially developed. The building were built in the 70's. We have been corporate neighbors going on for 30 years. Many years ago Alan Swanson, the owner of the company and the property let Loren Dubois who is here tonight, his dad park some trailers over in the back corner which was in essence our property and they have been there for a number of years and do not cause a problem to us but recently Loren approached us and asked if it would possible to relocate the lot line in that corner of the site just to enable him to continue use some storage back there for his trailers and some other equipment he has. He is one of the finest contractors around. Periodically they have equipment. He has tenants back there and parking. The plan represents a transfer of 1,835 square feet. No new development being created, no building addition on either site. The plan meets all the requirements of the city. There are 2 waivers. First is that the have to show info for 1,000 feet around the site. I am asking for a waiver of that. Second waiver is for waiver of sidewalks. This is a little bit different from the case you just heard. What I heard sitting in the audience

was that there was creation of a lot as part of that application. There is no creation of development here, it is a simple lot line adjustment. If you read 190-212 it differentiates between the residential and industrial zone. In the residential zone you have the right to ask for the sidewalk to be built or voluntary contribution. In the industrial zone you don't have the right to ask for the voluntary contribution. You have the right to ask for the sidewalk to be built. I would like to read that section because it essentially says that the allows the Planning Board to waive the sidewalk requirement in an industrial zone if the Board determines that the nature and/or intensity of the proposed use would obviate the need for these improvements. There is no intensity of our application. It is just simply an invisible line that we are relocating. There are no sidewalks in the area. The Board has recently approved a couple lot line relocations where there has been no development. On March 19th, Berube lot line plan came before this board that was approved without a sidewalk contribution or request. Then on April 9th the Neveau Trust Plan came before the Board as well. I would call your attention to Loren's frontage with his building so close to the street. There is about 6 feet between his building and the right-of-way line and then about another 4 feet to the curb line. Our little piece of frontage is accommodated by mostly our driveway. So I suggest there is not enough room. In front of Loren's facility it is a handsome building and I think to put sidewalks in there would be forcing it. The case before us is a little bit of different set of circumstances. My prime reason for the waivers is we are not creating any development.

Mr. Houston said normally on a lot line relocation, it is a subdivision. Historically the board normally doesn't require a sidewalk for a lot line relocation if it was a site plan that was creating a need for additional pedestrians or a need for a sidewalk then we would be asking that question as part of a site plan but normally on a subdivision unless you are creating a new lot that is going to have the potential for new development in an industrial district, I am trying clarify this issue a little more for the board.

Mrs. Wilbert said it would be helpful to me if in our packets we were given the two different sections Mr. Petropulos indicated that the requirements under the ordinance for sidewalks in residential areas are different from those in the PI and I think that would be something that would be helpful for us to refer back to from time to time.

Mr. Houston said we could just put it in your packet, just like your by-laws. It seems like we visit this subject time and time again.

Mrs. Wilbert said she is accepting the reading that Mr. Petropulos put in the record that says if we are not creating any intensity here and if it is in the PI then we have no opportunity to accept the contribution. It is either build on this site in this plan or not at all. Correct?

Mr. Houston said correct.

Mrs. Overby said she would like Mr. Petropulos to share the code number with us if he has it.

Mr. Petropulos said 190-212(D)(1).

SPEAKING IN OPPOSITION OR CONCERN

No one

SPEAKING IN FAVOR OF THE PLAN

No one

Mr. Dufour said this concludes the public hearing on this application. We will now carry the deliberations into our public meeting. The Board reserves the right to recall any party to this case for clarification.

Mrs. Wilbert said this seems extraordinarily straight forward to me and we are simply moving the line and the use remains exactly the same it is just the land underneath the trailers are owned by someone they weren't owned by before and we are not creating any additional value to either parcel and we are not adding any intensity.

MOTION by Mrs. Wilbert to approve New Business - Subdivision Plans #2, Acorn Family Realty Trust and Three Congress Street, LLC (Owners) proposed subdivision to relocate a lot line and transfer 1,833 square feet from lot 140-2 to 140-19. It conforms to NRO 190-138(G) with the following stipulations and waivers:

1. The request for a waiver of 190-282(B)(9), which requires that the plan includes existing conditions within one thousand feet of the site is granted.

2. The request for a waiver of 190-212(D)(1), which requires the installation of sidewalks in commercial and industrial subdivision is granted.

SECONDED by Mr. Latham

Mr. Dookran said he had one question about the sidewalks. I want to make sure the reason why we are waiving the requirement for the sidewalk is because of past practices as stated by Roger and stated by Mr. Petropulos. The examples that he gave, is it simply because of that.

Mrs. Wilbert said that is not her reason. My reason was the language of the ordinance section that governs the PI. That is precisely why I would like to have that language before me at future meetings. If it reads as Mr. Petropulos read it, and as staff says it reads, that in the PI we construct sidewalks if we are increasing the intensity of the use of the land and we do not have the opportunity to accept a contribution in lieu of. That's why I think that this site plan, this specific site plan, meets those specific criteria to grant a waiver.

MOTION CARRIED UNANIMOUSLY

NEW BUSINESS - SITE PLANS

3. **State of New Hampshire, Dept. of ROW (Owner). Pennichuck Water Works, Inc. (Applicant). Proposed amendment to Site Plan #NR2121 to construct a one story, 500 square foot water booster station with associated site and access improvements. Property is located at 154 Daniel Webster Highway. Sheet A - Lot 117, Zoned "RA" - Urban Residence A. Ward 7.**

MOTION by Alderman LaRose that the application is complete and the Planning Board takes jurisdiction of the application.

SECONDED by Mr. Jurewicz

MOTION CARRIED UNANIMOUSLY

Jim Petropulos, Hayner/Swanson, Inc.

Mr. Petropulos is representing Pennichuck Water Works. Chief Engineer John Boivert is with him tonight. As you read in the record we are seeking plan re-approval for a booster station located at 154 Daniel Webster Highway. Some of you may remember that the project was approved October 4, 2007. The project did not

move forward at the time for funding reasons but recently this project has been designated as a green project, a stimulus project so Pennichuck is seeking to reapprove. The property is located at Sheet A - Lot 117. It is 4.3 acres in size. RA zoned property, commonly referred to as the Armory property. The site is bordered on four sides by streets, Daniel Webster Highway to the west, Veterans Drive to the north, South Main to the east and the exit 2 ramp system to the south. This general area is developed in a commercial sense. The closest home to the property is about 800 feet to the east on Clairborne. In the southwest corner I have shaded in green there is about an acre of wood property. That is the area that Pennichuck is seeking to cite the booster station. Bisecting that wooded area is a man-made interminant drainage swale. That swale was designed to carry stormwater runoff from Daniel Webster Highway in the lot development to the west of it through that channel and into the Exit 2 drainage system and to the river. The proposal is to construct a 20' x 25' utility hut which will contain booster pumps for local water system support. Pennichuck has successfully gained an easement from the State of New Hampshire who owns the property to perform this work. The reason it is located in that corner of the site is because the intake and discharge lines were planned for as part of the FE Everett roadway improvement including Exit 2. This booster pump station will improve pressure for the commercial lots in the south parts of Nashua, predominantly DW Highway. It will also reduce the stress and strain on several other pump stations in Nashua. In fact that reduction translates into energy savings and that is why it is deemed a green project. Once constructed Pennichuck will provide maintenance to the station and there is a single parking space on there. Generally maintenance is limited to about once per week. Pennichuck originally hoped to get a driveway off of Daniel Webster Highway to service this small utility hut. They petitioned the State of New Hampshire DOT to do that. DOT denied them the ability to do a single driveway because of proximity to DW Highway and such a heavily traveled road. So the solution was to construct a gravel drive off of the end of South Main. South Main is essentially paved and built to the end and so there would be several hundred feet of a gravel drive running parallel to the State Highway fence to service this booster station. A copy of the denial from DOT was submitted to the City. The reason we submitted it to the city was because that gravel driveway had to cross the intermittent swale and we had to properly culvert it and had to go to the Conservation Commission, Zoning Board of Adjustment and receive a state dredge and fill permit. We received a state permit. Back in 2007 we received our Zoning and Con Com approval and recently re-upped those. Some of my notes from back in the 07 meeting reflect questions such as noise. It is a fully enclosed

utility hut. Fifty feet away you will be unable to hear any noise coming from that structure. Landscaping was added. You will notice on the scheme an arbivitory buffer will be placed along the west and southerly portion of the hut. About 99% of that big wooded corner buffer of the armory will remain. Along the highway line there is really a nice substantial growth of shrubs. Initially you will see the hut but over time it will grown in and will barely know it is there. There are 2 waivers requested. First has to do with stormwater management. Back in 07 I presented to this Board that we have actually a 0.014 increase in the 10 year storm event. It is practically immeasurable and we are asking for a waiver of that. Just to the south of it is a large stormwater treatment area for the state and that very small increase is insignificant. The second waiver has to do with the power service to the facility. We are seeking a waiver. Currently the regulations as they read in Nashua are that services are to be underground from the public right-of-way. You will also notice in your packet there is a letter from Tulley-Buick. Pennichuck approached Mr. Tulley last time around to discuss servicing power to this facility seeking an easement for a brace arm for a power pole. Mr. Tulley had some concerns about adding another utility pole along the frontage of his property even though it was within the public right-of-way. There is currently a number of poles with a lot of gear on them and he expressed his dissatisfaction with servicing this small booster station which needs 3-phase power. As Pennichuck began talking to Mr. Tulley and with PSNH what they have come up with is a solution that I believes in Mr. Tulley's letter I believes he supports. There is currently an overhead line in South Main Street and what PSNH can do is to set 2 poles on South Main and run overhead with 2 poles along an access drive to service this particular building. Pennichuck is certainly comfortable with that. What it would elevate is the need for an additional pole across the street from Daniel Webster Highway. Potentially one option is to run an overhead line across DW Highway into the pump station. Pennichuck wants to be a good neighbor. They talked to PSNH. This Board historically new development is that services need to be underground but you need to get power to your facility within the street to get to that point. I think our waiver is germane to this section here where your code requires us to be underground. We are requesting that they be overhead. In conclusion we are seeking reapproval of the pump station. It is a needed infrastructure improvement. 190-233 of the Land Use Code, there is a particular section, part 6 that speaks just to utility lots. So it has its own separate little designation in the code. We conform to those regulations but they do seek underground power service and they do provide in that code the ability for the Planning Board to waive that.

Mr. Dookran said he didn't get a change to go back to the 2007 minutes but does remember some things coming up and you said you took good note and have addressed most or if not all of them.

Mr. Petropulos said all the conditions of Con Com and Zoning Board and all the condition that the board put forth on 07 are incorporated into this approval.

Mr. Dookran said you mentioned this project was taken off the shelf by Pennichuck because of the receipt of stimulus funding for green projects.

Mr. Petropulos said in 07 they took it off their schedule for construction and recently because it is deemed to be an energy saver it received a designation of a green project.

Mr. Dookran said he presume that energy savers is in the type of equipment.

Mr. Petropulos said he would let John answer that. My guess is yes, it is less stress on some of the other pump stations, newer pump equipment, more efficient pump equipment.

Mr. Dookran said maybe you will answer this question because I like that idea of a green project and you mentioned as you drive on DW Highway initially you will see the building while your arbivortes grow up 5, 10 years. Any opportunity to make it more a green-type building? Aesthetically pleasing. Why we wait for the vegetation to take shape. Mr. Tulley was concerned about aesthetics of the overhead poles. I know as you drive along these highways you see all kinds of shapes and forms of everything, every different color.

Mr. Petropulos said he would let John speak to the architecture. What he is planning on putting there. I am not entirely familiar with the roof structure or the exterior sheathing of the structure.

John Boivert, Chief Engineer Pennichuck Water Works

Mr. Boivert said to answer the city engineer's questions, the first question was we did receive green designation because what this has done is by building a booster station here we don't have to utilize 2 other inefficient stations to do the same thing. We are saving a considerable amount on electrical costs. That is the primary reason why we received the green designation because we are reducing our kilowatt load by adding this station and taking that load off some other stations where it was being used less

efficiently. Regarding the architecture of the building a couple different things. One is that it is pretty much a block building that has a siding façade, pitched roof, asphalt shingles. It is the most economical building that we can put up. We believe it is still with landscaping, aesthetically pleasing. We do not necessarily see the opportunity for additional green architecture in the building. It is a very simple heated building. It is probably only heated to about 50° in the winter time. We just have to keep it warm enough so things don't freeze and stay in operation. From an architectural perspective there is not a lot of opportunities here so it wasn't something that was considered and quite frankly those probably would have increased costs where those would have had to been justified and we would have had to justify those added expense before the Public Utilities Commission. There is additional landscaping we could do. We have shown some screening but there is the ability to add additional features there if need be. It does sit back off the travelled way a significant amount and it will sit back up towards the large pines. There are a few large pines because of the right-of-way constrictions that do have to come down but there are opportunities there.

Mrs. Overby said this might seem like a trivial matter but when you currently view this site you see trees. After the construction you will see a gravel road with poles and lines. Is there any way a buffer, some of tree growth can be put along the Daniel Webster side. It is a pleasing site and now what you are going to see coming down there is gravel and poles.

Mr. Boivert said on the Daniel Webster side, we are coming in off of South Main Street. What you see is anything that is already undisturbed in the right-of-way right now which if you look at the drawings it is off the travel way a little bit. That will still be as it is. When we get onto our site there will be plantings on the west side there so there are going to be trees that will be planted there. As you are coming down there are still a large amount of the mature pines that you may not see this thing until you are right on it.

Mr. Petropulos said according to my note you had asked a similar question 2 years ago. I don't think you are going to see the road. In fact if you go out there now there is a natural corridor where this road is. What the plan really doesn't show is there is quite a bit of vegetation along the fence line that has grown up over the past few years. (inaudible) If this project were to move forward with an approval if there was a condition about enhanced landscaping I think the applicant would be amendable to that.

SPEAKING IN OPPOSITION OR WITH CONCERNS

No one

SPEAKING IN FAVOR OF THE PLAN

No one

Mr. Latham said he notice there is a gas pipe line along the fence line. Is that going to be disturbed.

Mr. Petropulos said they were not using the gas for heat. Obviously everything will be DIGSAFE but we don't want to go near it.

Alderman LaRose said we received a letter from Tulley Buick. Should we put that into the record?

Mr. Dufour said it typically does get entered into the record. Mr. Houston alluded to it in his communication and our past practice has been that whatever he indicates is included in our packet becomes part of the record.

Mrs. Wilbert said with regard to that letter should be consider that. My question to the Board is should we consider that as a stipulation to the plan that the requested route of the power lines be from South Main as the engineer indicated and as the letter indicates is acceptable to Tulley. When I was out there it I was absolutely struck by the fact that Tulley is the attractive site on Daniel Webster Highway south. It is a very attractive site. The lawns and condos beyond that are nice too but there are many commercial sites in all of Nashua that could take a page from the Tulley book. It is an attractive site.

Mr. Dufour said it is not shown on the plan. They have eluded to it this evening that is what they are going to do.

Mr. Petropulos said they would be happy to represent the option of South Main to overhead to the site. We would be happy to represent that on the drawing.

Mr. Taylor said he had a point of clarification on the electrical lines. Originally when the plan came in the electrical to the building wasn't shown. That is the waiver request that you have before you tonight. It sounds like there is an additional waiver request or maybe the old one is moot because it will be shown on the plans as testimony from Mr. Petropulos. The new waiver request

will be from 190-221(A) which is the requirement for underground power to the site.

Mr. Dufour said Mr. Petropulos said you might want to concur with this. Matt is saying that waiver request number 3 is no longer warranted because you have eluded to the fact that you are putting those lines.

Mr. Petropulos said he thinks it is 190-233. That is part 6. It speaks to utility structures and I think that is the code. What happened is the checklist for site plans represents showing utilities and it hadn't been worked out yet. I think that is the reason we hadn't shown them. When we went through the process, I think we just asked for the waiver. That is not really what we are trying to do. We are not trying to not show them. Matt is correct, we seeking a waiver to install an overhead service where underground is required under 190-233. Is that correct?

Mr. Taylor said there are two sections that its required. You are correct, 190-233 under Utility Structures it requires underground and 190-221 it also states that underground is required.

Mrs. Wilbert said for clarity, the request number 3 should read "A request for waiver of 190-233" since that is the specific utility section which requires all utilities to be underground. Is that right?

Mr. Taylor said yes.

Mrs. Wilbert said is either granted or not granted.

Mr. Petropulos said for redundancy I can see Matt saying please add 221 and 233 in there.

Mr. Dufour said that is in modifying stipulation number 3. Are there any letters associated with that?

Mr. Taylor said 221(A) and 233 (E)

Mr. Dufour said this concludes the public hearing on this application. We will now carry the deliberations into our public meeting. The Board reserves the right to recall any party to this case for clarification.

Mrs. Wilbert said she would like to ask Engineer Dookran a question. With regard to number 4 the request for waiver of 190-215(B) do you have an opinion on that?

Mr. Dookran said he thinks this came up the last time as well. The area has a huge detention retention so I don't think its significant the number that was the deferential between pre and post.

MOTION by Mrs. Wilbert to approve New Business Site Plans #3, State of New Hampshire, Dept of ROW (Owner), Pennichuck Water Works, Inc. (Applicant) proposed amendment to site plan NR2121 to construct a 1-story, 500 square foot booster station with associated site and access improvements. It conforms to NRO 190-146(D) with the following stipulations or waivers:

1. Prior to the issuance of a building permit, minor drafting corrections shall be made to the plan.
2. All landscaping improvements shall be installed prior to the issuance of a certificate of occupancy.
3. The request for a waiver of 190-221(A) and 190-233(E), which requires that all utilities be underground on the plan is granted.
4. The request for a waiver of 190-215(B), which requires that the post development peak stormwater discharge rate not exceed the predevelopment discharge rate is granted.
5. Utilities would be overhead from South Main to the site.
6. Additional plantings be added to the front and side of the building per the approval of staff.

Mr. Houston said on #5 you should probably state that it is electrical utilities.

Mr. Dufour said #5 is amended to read electrical utilities would be overhead from South Main to the site.

SECONDED by Alderman LaRose

MOTION CARRIED UNANIMOUSLY

OTHER BUSINESS

1. Review of tentative agenda to determine proposals of regional impact.

None

MOTION by Mr. Dufour that there are no issues of regional impact.

SECONDED by Alderman LaRose

MOTION CARRIED UNANIMOUSLY

2. Consolidation and Subdivision Plan for Evelyn Circle, 368 Main Dunstable Road, per plan recorded as HCRD #34755. Review and acceptance of sidewalk easement and drainage and sidewalk easement as noted on the plan. (Tabled from December 11, 2008 Meeting)

Mr. Houston said there is a staff report in the packet. This is a housekeeping measure. If the Board recalls this subdivision had a stone wall in front of it along Main Dunstable Road and some beautiful maple trees. The Board attempted to save a number of the trees and the stone wall. They were to get an easement as a condition of approval on the backside of the stone wall for the sidewalk which the subdivider built. That was a point in time when the Board didn't have the authority to accept easements. It was a few months and then that ordinance was changed back to the way it was where the Board could accept an easement. This other business item is to clean up that measure to accept the easements for the sidewalk. It has been built and we need to have the easement in place so the adjacent property owner is not liable. The planning board already did that when the board approved the subdivision as part of the public hearing process. The applicant should have at that point in time gone back immediately to the Board of Alderman and requested them to accept the easements. They did not and a year or 2 lapsed and then that authority was given back to the Planning Board. It is more appropriate that it is before this Board since the Planning Board put that stipulation on it in the first instance to save the trees and stone wall.

MOTION by Alderman Larose to accept the easements as provided by in the report.

SECONDED by Mrs. Wilbert

Mr. Dookran said this first appeared on our agenda. What happened between then and now.

Mr. Houston said that one of the parties that needed to sign the easements had some personal issues they were dealing with so they couldn't do anything at that point in time. That is why there was a delay

MOTION CARRIED UNANIMOUSLY

3. Referral from the Board of Alderman on proposed R-09-206, relative to the disposition of a portion of land on Shady Lane (Sheet B, Lot 3116).

Mr. Houston read the Staff Memo as follows:

The attached Resolution R-09-206 from Board of Alderman was referred to the Planning Board for a recommendation. Sale of City land is forwarded to the Planning Board pursuant to City Charter Subpart A, Chapter 77(f)"...The Planning Board shall review and make recommendations to the mayor and board of alderman on all locations for proposed municipal buildings and facilities, including educational, on the purchase and sale of any land by the city and on existing or dedicated streets to be discontinued or vacated."

The city parcel (Sheet B, Lot 3116) is a total of 1.98 acres (86,249 square feet) as shown on the attached GIS map. The proposed resolution requests that Board of Alderman authorize the Mayor to execute all documents necessary to convey a part (5,139 sf) of this 1.98 City owned lot to the abutting property owner (David Hughes and Cynthia Sofrin) subject to a purchase and sales agreement, the potential environmental/landfill issues being resolved and other issues as referenced in the resolution. The entire 1.98 acre parcel is shown as Government/Institutional use on the City's 2000 Master Plan's Future Land Use Plan/Map. The city parcel abuts the New Searles Elementary School and is across the street from Kirkpatrick Park.

The Office of Corporation Counsel has provided a complete analysis which is attached to this resolution. The Planning Board may receive future subdivision application(s) if this resolution is adopted and the parties proceed.

Mr. Houston said basically this resolution allows the parties go forward with a purchase and sales with terms of how the environmental issues will be resolved with an agreement that is in place and protection for the city at the expense of the potential purchaser, David Hughes and Cynthia Sofrin. Alderman Cox and Alderman Plamondon, Mr. Brown one of the abutters that may wish to speak to this.

Mr. Dufour said earlier today he contacted Roger and his concern for this legislation at the time I read this as such we didn't have the supplemental. It was unclear to me, basically it said that we authorize them to enter this agreement. The purchaser has the right to conduct his environmental testing and if there are

issues he has the right to back our of it. My question was well what happens if we are doing environmental testing and there are issues. So Roger's reply was that once this passes then the applicant has to go to the respective departments to make sure the process is in place so that testing be done as required by standards. Is that correct?

Mr. Houston said yes. In the agreement put together by corporation council they will consult with the division of public works as well as the Brownsfield Coordinator and any other city staff member to make sure the city's position is covered. The city also has the resolution that states the city has the right to back out if they discover there are issues once the test pits are dug. It will be monitored and the city will cover that issue through that agreement.

Mrs. Wilbert asked who is liable under the circumstances. If this is approved who is liable for what could occur on that property should something occur. Is the city or new owner?

Mr. Houston said that would be a legal question.

Mrs. Wilbert said it is an appropriate question though because we are talking about entering into a P&S not conveying it to a new owner and maybe the alderman have more information for us. If the city remains liable and they get to test even if they are in compliance as you have indicated to the chairman and have to go through the various departments of the city to do that I would still be concerned. We have heard lengthy discussions about this site. If sometime were to turn up, who bears the liability.

Mr. Houston said it is a city landfill currently and it would remain a city landfill. It would be the decision of the city at that point as to whether or not to proceed with the sale of the property if there is an environmental issue on the property.

Mrs. Wilbert said she wasn't terribly concerned about their discovering an environmental issue. But what I understand is that we are entering into the beginning process of transferring this over to new owners and as a result of entering into this agreement the new owners to be would have the ability to test and that they would have to test in accordance with city standards.

Mr. Houston said there would also be state standards. The Department of Environmental Services would be involved as well. I can't answer all those specific questions because this resolution starts the process and it starts the process where the experts can

be brought in and the city can draft an agreement that protects all the interests of the city in any future transaction. The Board under the city charter is forwarded purchase or sale of city land to see if it conforms to the city's master plan. If land subject to sale or purchase were shown as a future park, or some other use then this board may have an objection to the sale of the land. We don't know if it is part of the landfill, from a policy point of view at this time. We know that it is on or near the inferred boundary and certainly you have heard testimony or some discussion on that with some of the abutters, and one of them is here tonight. I don't have all the answers but I think this resolution gets it to a point where maybe perhaps some of those answers can be found.

Mr. Dufour said we are being asked for a favorable or unfavorable recommendation. For this particular legislation does an unfavorable trigger any change in the amount of favorable or unfavorable votes.

Mr. Houston said no. It is a recommendation only.

Mr. Dookran said before we start looking at what's favorable and unfavorable let me give an opinion. As stated in the resolution the purchase and sales agreement will protect the city in either way it goes. The sense that there is going to be a vigorous investigation program to determine the environment conditions on the city owned property. Should it be determined that contamination is found can it be remediated in a cost effective manner then the deal is off. That is how we are protected. It remains a waste city that is still city owned and it will have to be the extent possible put in a cap, a landfill cap, as approved by NHDES and that is going back I don't know how many years ago that was done and today we believe if that site is part of the landfill it is capped properly. The thing is we don't have good records and that is why we are at a loss. I have been working with the Brownsfield Coordinator and people at Solid Waste Department in drafting up the protocol for entering or giving Mr. Hughes the ability to enter and perform the environmental testing and the final draft has been prepared. This draft has gone to the Risk Department.

Mrs. Wilbert said so you are telling me there is a fully developed protocol because this one little paragraph I have does not relieve the city of liability except to any damages to the purchasers. But you are saying that there is this carefully drafted protocol under what circumstances they can enter and how they can perform the testing.

Mr. Dookran said that is correct.

Mrs. Wilbert said and if we are being asked to recommend only whether or not it is a good idea for the city to transfer ownership of this land and need not concern ourselves with those broader issues then I am satisfied they are being addressed.

Mr. Dookran said he can read off. It was completed today and it has been forwarded to our Legal Department for final review. I can read you a few things to give you some assurance. It talks about city insurance requirements. Pretty elaborate insurance requirements for Mr. Hughes or people representing him. It talks about using qualified personnel to do any layout on the property line and performing excavation, working with the NHDES. It give the extent to which the test pits must be done. To the water table to the basement level of the proposed building. It talks about a number of test pits and the location of the test pits. It goes on and on. So it is a well crafted document that protects the city well.

Mrs. Wilbert asked if it has gone to the city's Risk Department.

Mr. Dookran said Risk weighed in and they gave the insurance requirements.

Alderman Jeff Cox, 12 Colleen Road

Alderman Cox said Engineer Dookran said it very well. This is something that has been going on for over a year. Don Zizzi who is contracted to be our Economic Development Director, interim and the Mayor had come up with a plan to identify all the city parcels that weren't necessary to be held by the city and should be put back on the tax rolls. Mr. Hughes has been very patient and they are doing extreme diligence in making sure we are cautious as we move forward with this. Not only did we learn things from the New Searles site right next door and currently in progress and going well but they also learned that the testing, the identifying, more then just we have parcels lets get them back on the tax rolls. It means more than that. It also developed a city-wide process to come up with identifying all the different parcels in the city and identifying them as what they are and what they may be and what problems may occur and come up with the protocol that Engineer Dookran is speaking to is very carefully crafted to make sure that the city and mostly the abutters should be very content and this is going to be a clear and open process to make sure they all know what is going on and be protected.

Willard Brown, 49 Wethersfield Road

Mr. Brown said he is an abutting property. He is primarily to try and get the city to work with the abutters. He received notice yesterday of this meeting and didn't know this legislation was going through for this resolution. I had brought forward to you in the New Searles discussion and a previous discussion on this building proposal by Mr. Hughes that the property that he plans on taking is in that EPA mitigated area 10 years ago, 1995 area is where they had gone through, stripped all the land out and went down so many feet. I don't have details because there doesn't seem to be details. For some reasons I am running into road blocks finding information from the DES as to what the records are. I can tell you it is listed as an asbestos waste site still on the books, mitigated but still on the books. If you follow the 2003 plan I gave you, a 63 page document a few weeks ago regarding this New Searles site and the asbestos mitigation issues it has a rigorous thing that there should be no trees on the land. There should be continuous testing of the property and none of that has been done since 1995. It has been abandoned. It is a great buffer area right now during this time of year. During the winter it is stripped right down to no leaves. You can see clear down to Kirpatrick Park from the back of my house. My concern is the fact is if this property gets taken in its current form there is a buffer zone between the rear of his property and that water right there. That water generates from up on top of the hill in the Shelton Drive area and comes down through all the lots and goes underneath my house in a steady stream and goes under with French drains and comes out that area. It is basically a stream of water comes out. It comes and goes. Right now it is extremely in the large side of it and it is full of water. What I am concerned about is this piece of property will come close enough to that buffer zone that that land strip that comes down between all the lots that was the old railroad bed becomes landlocked. It can't be access by any city worker that needs to get to it for whatever reasons they have to get to it. But it still is city property but it would be landlocked because the buffer zone of that wetlands could ebb and flow to a bigger level, smaller level, depending on the weather. But it still only gives you a 15 foot buffer between the back of the lot line and the wetland buffer. I was discussing with the alderman here tonight possible issues. I think it is premature until we get everybody together to approve this plan because there are other parties looking to take other parts of this property. This is only 1 little 5,000 square foot. We got 86,000 square feet that is a problem here. I think we should be looking at the full picture and seeing how we can mitigate this to everyone in that area. When I called the city to ask about this I

had gone through all the departments and ended up in Legal who found out who was doing what. It wasn't brought forward to us. I have a problem with the communications in the beginning of this. We have a potential bidder that is talking to the city that wants to but right up to the property. If they do that they land lock the property. We have not just this one piece of land. We have other things going on. I would encourage the Planning Board to take a hard look at this and what is the goal of this. To mitigate the property and make it taxable which I agree. We have an old waste land site that has asbestos in it. Mr. Hughes took it upon himself to take a back hoe into the city property and started digging the day after the meeting on May 8th but I was quite upset about it. That is why I want everything in black and white because we are messing around with something that if we dig up something bad back there, but we don't know. It hasn't been documented this over the years. We are going to go poking around and this is clean to dig, this is not clean to dig, we found some asbestos here, how do we mitigate it, is the city obligated after they test it to do something? They may be. We are not following the regulation of the current asbestos sites and how they are suppose to be mitigated after the fact. It needs to be looked at and I encourage the board to take an unfavorable look at this at this point until we can come up with a better plan.

Mr. Dufour said just so you know there is nothing that we are doing here tonight whether we submit a favorable recommendation or unfavorable recommendation that is going to slow this down. Your main discussion to be had is I believe with Planning and Economic Development on July 22nd. I am also troubled by the fact that know abutter seems to know that is going down. There should be some type of notification.

Mr. Brown said he was told about this yesterday. The plan came before the board and suddenly there is legislation to buy the property and we haven't got a site plan going.

Mr. Dufour said they are attempting to purchase this property. In order for them to do that, they have to do it in steps. The first step for the alderman to pass this legislation. By charter it simply comes through us, whether we vote for a favorable or unfavorable recommendation this evening, it still goes on to the alderman.

Mr. Brown said you have the authority to make recommendations and that should be handled by that board in a dubious and aggressive way.

Mrs. Wilbert said if she could clarify. We have only this proposed ordinance before us. We can only make a recommendation on this ordinance, not on anything else that may come down in the future and this ordinance is aimed only at authorizing the city to enter into the P&S agreement and this ordinance is merely the beginning of the process and what it would require the potential purchaser to expend the funds necessary to do the kind of testing you want done. It wouldn't be at the city's cost and Engineer Dookran have satisfied at least me there is a very careful protocol how that might be done. I am trying to figure out why it would be a loser of a situation. It also occurs to me that if your real concern is about getting into the back area and land locking it that is easily addressed at the time of negotiations of the P&S with regard to an easement across that if the city needs it.

Mr. Brown said there is nothing being talked to by anyone. The neighbors don't know what is going on here. In the planning status we have a 10 year master plan here that is being asked to be deviated from and we are not even notifying the abutters about it. We are going to propose and have this thing done without abutters input.

Mrs. Wilbert said it won't be done, it is merely a recommendation from this board to begin the process which would be open to all of the abutters to participate in.

Mr. Brown asked where in the process of proposing this ordinance does the abutters get notified.

Mr. Dufour said he didn't think there is one. Until that point that if everything tests favorably then this plan comes before us for review. I wish there was a way the abutters were informed of this coming meeting.

Mr. Brown said you are talking about selling this property before the abutters get notified and they are being affected.

Mr. Dufour said it wasn't there call. I wish there was a way for the infrastructure committee to notify the abutters. I am not sure what their usual scenario is.

Mr. Brown said it is a process that needs to be discussed. When I bring this topic up of notification I can read the ordinance and the nature of the ordinance but you are going to have property that may change hands before everybody knows what is going on back there. In my opinion because it is a change of use, a variance, they should be notified before even the sale is approved.

Mr. Dufour said he didn't know what the notification process is. It is only going to a final sale scenario if everything is favorable in that testing.

Mr. Brown asked where you tell the abutter to put their 2 cents in.

Alderman LaRose asked Roger if the city is going to sell the piece of land there has to be a public meeting.

Mr. Houston said this process is a resolution, not an ordinance. I can't answer that question whether the city has to hold a public hearing. I think that would be addressed with the Legal Department when they reviewed this. Normally with a resolution there isn't a public hearing, but I am not sure if the law requires a public hearing by the board of aldermen on the sale of city-owned land.

Mrs. Wilbert asked if it would not be possible for us to make a recommendation with stipulations on it that at some point there be abutter notification. If we make a favorable recommendation on this with the understanding that before the completion of the sale there be an opportunity for abutter notification and public input.

Mr. Houston said that would be appropriate within your authority to send a recommendation.

Mr. Dookran said he believed no purchase and sales agreement would be executed until we have this lot line relocation and a subdivision plan approved before this board.

Mr. Houston said that is a public hearing. You could not sell the property unless you have a subdivision in place.

Mr. Dookran said that would be the time we would address the abutter issues.

Mr. Dufour said most of what is of concern to you today, won't be a concern to this board for approval. Your battle is really with the alderman.

Mr. Brown said he understands but it comes through this board and I am going to make my presence known so other people understand what is going on. I am the only one following this at this time. For the interest of the whole neighborhood and the interest of this whole area, this be properly handled. I don't have any assurances that this is being properly handled but I am being told that it is. I haven't seen these reports to come through. They have to get approved by Legal.

Mr. Dufour said the mechanism is being created for this to move forward with the testing.

Mr. Brown said there is a covenant on that property of Mr. Hughes of no subdivision.

Mr. Dufour said that is a legal issue.

Mr. Brown said I am bring that to your attention.

Alderman Marc Plamondon, Chairman of Infrastructure

Alderman Plamondon said just as a point of clarification. Infrastructure would normally meet in 2 weeks. The meeting will be in August.

Mr. Dufour said and that date is posted on the city web-site.

Alderman Plamondon said it is posted at the entrances to city hall and also channel 15.

Mr. Dufour said for the purpose of this piece of legislation, and your reference to past activities, is there a mechanism in place where the abutters are notified.

Alderman Plamondon said in his experience, that is a question for council, but in my experience in the city transfer of property over to a private entity there isn't a public hearing. All the meetings are held publicly, the legislation is posted publicly, The Telegraph, TV 16, it is public information. To say that every abutter is notified that abuts the property there is no parameters to my knowledge.

Mrs. Wilbert asked if Alderman Plamondon if he was willing to assure us of abutter notification prior to your next infrastructure meeting.

Alderman Plamondon said we don't have that authority. We can put it in as part of the stipulation coming out of committee recommending abutter notification with certain parameters. We can amend the legislation to get that done.

Mr. Dufour said we would want them to be there at that meeting.

Mrs. Wilbert said it is a simpler thing. I am not asking you to do any kind of legal notification. I am just asking if you could notify in writing the abutters to the parcel.

Alderman Plamondon said normally when notifications are done they are done via registered letter to show that abutters were notified so we have back-up information. We could do something unofficial. Alderman Cox said he was willing to speak to the residents. There are different ways but we can certainly do that.

Mrs. Wilbert said she would be satisfied if we left here tonight with an understanding the owners of the real estate abutting this entire parcel receive notification of the pending sale of a portion of the parcel and they and welcome to have their input heard at the infrastructure committee meeting.

Mr. Houston said sometimes it is referred to as a courtesy notice to the abutters. It is not an official public notice by certified mail but is usually done by first class letter informing the general neighbors that this is going to be heard.

Mr. Dufour said he is fairly confident that this would get handled as Engineer Dookran said it would. It seems like it is the right thing to do. I understand Mr. Brown's concerns. I am more troubled by not what they are trying to do now, but I am troubled that all the millions of dollars that were spent at that New Searles site trying to remedy that has any records.

MOTION by Alderman LaRose for a favorable recommendation R-09-2006 with one stipulation that the Infrastructure Committee send unofficial notification be sent to abutters of the entire parcel.

SECONDED by Mr. Jurewicz

MOTION CARRIED UNANIMOUSLY

4. Planning Board reappointments to the Capital Improvements Committee for a 2 year term to expire, August 1, 2010.

Kenneth Dufour
Charles Budris

MOTION by Alderman LaRose for approval for Kenneth Dufour and Charles Budris to the reappoint to the Capital Improvement Committee for a 2 year term to expire August 1, 2010.

SECONDED by Mr. Latham

MOTION CARRIED UNANIMOUSLY

DISCUSSION ITEM

Mr. Dufour said in your packet there is a court update provided by the Local Government Center. Basically what it says if an applicant comes before us with an engineer and the engineer makes claims under his authority as an engineer when we vote on the case, unless his claims were disputed by another qualified engineer, we cannot use his claims as a reason to deny. I do have a question about that, is Engineer Dookran as this legal interpretation, how would he be viewed as the city engineer? Could we use his input as a reason to deny or would the courts view him as not an unbiased party.

Mrs. Wilbert asked if corporation council could answer that. Clearly not all boards have the city engineer as a required participant and we don't know what the situation was. One thing that we should all keep in mind and it was passed on by Dave Connell at that special meeting is that we can require an applicant to pay for our expert. We can table something and say we need an expert and we want you to pay for it.

Mr. Dookran said he isn't here as the city engineer.

Mrs. Wilbert said she thinks you are. Isn't he a required member under the ordinance of our planning board?

Mr. Houston said he is here by city charter as his position as city engineer required on the planning board.

Mr. Dookran said he is the city engineer but that doesn't mean he is the city engineer when I am at the board. It is different.

Alderman LaRose said having the city engineer, the reason I think it is in the charter is that we have somebody that has the knowledge of these things so if some engineer comes up and tries to pull the wool over us, we have somebody that can ask questions and we can make a decision on is this guy telling us is fact. Our city engineer questions his answers. A good example of that was the New Searles project when the abutters kept talking about the sink holes and the applicant's engineer explained what sink holes were. I didn't here out city engineer say that's not really true so what we were told from the applicant's engineer made a lot of sense and so you discard what the general public was trying to tell you was because of all the water in the area and the reason wasn't exactly that.

Mr. Dufour said we do have to be very careful to give Mr. Dookran some coverage. The court update said the specific opinions of experts can be reliably countered only by the specific opinions of equally qualified experts.

Mrs. Wilbert said Legal would give us the usual legal answer which is a very qualified answer provided it is something that Engineer Dookran has an educational background or specific knowledge then we can rely on him. Otherwise we better have our own expert. I think the point of that legislation is to put us on notice of what is sustainable and what's not.

Mr. Houston said the last paragraph is a little confusing but it is based on a Supreme Court slip opinion.

Mrs. Wilbert said a slip opinion is what they publish. They set it out. We do have the whole opinion. The slip is an official summary.

Mr. Dufour said what throws it off, is it say slip opinion are subject to change.

MOTION by Alderman Larose to adjourn at 9:40 pm.

APPROVED:

Ken Dufour, Chair, Nashua Planning Board

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Prepared by: Linda Panny

Taped Meeting